



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

services in the commission over which he presided, his services in the third commission dealing with arbitration were still greater, for it is common knowledge that he prepared the various Russian memoranda on arbitration presented to the conference, and was in no small sense of the word the framer of the convention for the peaceful settlement of international disputes. His profound knowledge of international law, his experience as arbitrator in international arbitrations — during the session of the conference he was president of the Venezuelan arbitration in Paris — gave him commanding influence, and caused him to be looked upon as the embodiment of arbitration versus war. Impaired health undoubtedly accounts for the fact that he played a less conspicuous rôle in the second than in the first conference.

In the domain of arbitration he was a well-known and highly respected figure. He decided the *Costa Rica Packet* case between Great Britain and Holland, (1897); he was president of the Venezuelan Arbitration of 1899; and was arbitrator in the Pious Fund Case (1902) and the Venezuelan preferential cases, (1903) before the permanent court at The Hague, an institution in no small measure due to his initiative.

It is evident, therefore, that he rendered great service to diplomacy, to the science of international law, and to the cause of international arbitration, and his death is a distinct loss to those who believe that law, not force, should rule the world.

THE VENEZUELA CASES

The relations of the United States to Venezuela and in particular the nature and the status of the five claims of American citizens and companies against Venezuela which have disturbed the relations of the two countries for several years past and which finally resulted in the severance of diplomatic relations in June, 1908, were discussed in the Editorial Comment of this JOURNAL for April (1909, p. 436), under the caption, "The Venezuelan Situation." As was there pointed out the Honorable William I. Buchanan, high commissioner on the part of the United States, after a protracted and difficult negotiation from December, 1908, to February, 1909, succeeded in effecting a settlement of two of the then pending claims, the claim of the New York and Bermudas Company on account of the sequestration of the company's property, and the claim of A. F. Jaurett on account of his summary expulsion from Venezuela. At the same time Mr. Buchanan also negotiated and signed a protocol for

the settlement by way of arbitration of the three remaining claims, namely, the claim of the Orinoco Steamship Co., the claim of the Orinoco Corporation and its predecessor companies, and the claim of the United States and Venezuela Co., commonly called the *Crichfield* Claim. It was felt during these negotiations that at least two of these cases were eminently cases for settlement out of court along the lines of the settlement of the New York and Bermudas Co. But inasmuch as the complicated nature of the cases did not permit of their settlement within the time at Mr. Buchanan's disposal it was thought best to include them in the protocol for arbitration specifically providing, however, in article 12 of the protocol that nothing contained therein should preclude Venezuela "during the period of five months from the date of this protocol from reaching an amicable adjustment with either or both of the claimant companies referred to," namely, the Orinoco Corporation and its predecessors, and the United States and Venezuela Co. The result has amply vindicated the judgment of the negotiators and affords a new illustration of the value of the Hague Court not merely as a tribunal for the settlement of international difficulties, but as a standing inducement for the amicable adjustment of international difficulties of a judicial nature by the parties concerned.

In pursuance of the terms of article 12 of the protocol five months were allowed for the settlement of the Crichfield and Orinoco Corporation cases. Negotiations were delayed, however, owing to the difficulty of the cases and the numerous interests involved which it was necessary to consult at every step and it became necessary for the two governments twice to extend the term allowed by the protocol for settlement, first for one month, and later for thirty days additional, from July 12, the last date allowed for settlement under the terms of the protocol. Settlement was first reached in the Crichfield case, the formal protocol of settlement being signed August 21, 1909. For a brief statement of the facts of this case reference is made to the Editorial Comment mentioned above. It is sufficient for our present purpose to recall that the Crichfield case was a case in which an American company, the United States and Venezuela Co., held a mining concession and a railway concession in connection therewith, it being expressly stipulated that the company should not be taxed at a higher rate than that provided by the then-existing law. The Castro government proceeded to raise the tax rate and to give practical application to the doctrine of *McCulloch* and *Maryland*, "the power to tax is the power to destroy." The present government of Venezuela

offered to settle this case upon the basis of an extension of the concession, but owing to the financial condition of the company, due to the arbitrary acts of the Castro government, the company felt unable to invest the additional capital necessary to restore the plant to working order and carry on the business. Accordingly the Venezuelan government offered a cash settlement, the sum to be paid to purchase alike the property and the claim of the company. The protocol of settlement fixes the amount to be paid by Venezuela at \$475,000 American gold, payable in the office of the Secretary of State at Washington, in eight equal instalments. The first payment of \$59,375 was made at once and the sum remaining is to be paid in seven equal annual instalments.

In noting the settlement of this case it is a satisfaction to add that it appears to have been a case in which the American concessionary loyally lived up to the terms of the concession and abstained from all intermingling in local politics, and in general discharged its full duty to the country in which it operated so long as it was permitted to operate.

The case of the Orinoco Corporation proved even more difficult of settlement. It will be remembered that this case grew out of the so-called *Fitzgerald* concession, covering a large portion of the delta of the Orinoco River originally granted to one Cyrenius C. Fitzgerald, in 1883. This concession has been held in turn by the Manoa Co. (Limited), the Orinoco Co., the Orinoco Co. (Limited), and the Orinoco Corporation, all American companies with a large preponderance of American stockholders. During practically the entire history of the concession the concessionary company was harassed by interference on the part of the Venezuelan authorities which sometimes took the form of physical interference with the possession of the company, sometimes the form of conflicting concessions which clouded the company's title and prevented it from obtaining the financial support requisite for the development of the concession. For a long time attempts were made to reach a settlement on the basis of a modified concession, covering a reduced territory, so as to eliminate some of the conflicting concessions. The parties were, however, unable to reach an agreement upon the terms of the proposed new concession and the safeguards by which it was to be surrounded, and the government of Venezuela foreseeing ultimate failure along this line of negotiation finally offered a cash settlement as in the Crichfield case. The amount to be paid was fixed at \$385,000, American gold, payable at the office of the Secretary of State at Washington, one-eighth to be paid in cash and the remainder in seven equal annual instalments.

It may perhaps be appropriately and fairly added that the satisfactory and amicable settlement of these two cases through the payment on the part of Venezuela of a total of \$860,000 affords a striking vindication of the attitude of the Department of State in presenting these claims and pressing for an agreement for their arbitration, as it must be remembered that Venezuela makes these settlements not under threat of continued diplomatic pressure with its potential resort to force, but purely and simply in order that it may not be necessary to arbitrate these cases at The Hague. Whether or not the cases would have been won had they gone to arbitration it is idle to speculate, but it seems reasonably obvious that if the defendant government is willing to pay \$860,000 in settlement rather than to arbitrate, the plaintiff government was justified in requesting that the cases be arbitrated.

On the other hand it is a pleasure to add that this settlement affords a striking evidence of the loyalty and good faith with which the present government of Venezuela is carrying out its obligations under the Buchanan-Guinan protocol of February 13, 1909, in accordance with which, as before noted, special provision was made in article 12 for the possible settlement of these two cases. The present government of Venezuela has by its course in its dealings with the United States manifested to foreign nations a sense of fairness and reasonableness which points clearly to the evident fact that Venezuela has entered into a new era in her foreign relations.

There remains but one of the five cases which formed the subject of these negotiations for which no special provision for settlement was inserted in the protocol of February 13, and which must go to arbitration at The Hague unless the two governments are yet able to reach some amicable adjustment out of court. This is the case of the Orinoco Steamship Co. This case has excited much interest and been the subject of much discussion because it is the case in which the United States is seeking the revision of the award of the umpire of the United States and Venezuela Mixed Commission of 1903, on the ground, briefly stated, that the umpire rendered an award in disregard of the terms of the protocol of submission and in the teeth of its express terms. The Department of State has received a good deal of gratuitous criticism in connection with this case on the ground that in asking this revision it was somehow imperilling the sanctity of international awards. This criticism is far from well taken since it is remembered that all authorities agree that there are certain well-established grounds, and universally admitted

grounds, for the revision of an international award and that in accordance with the terms of the Buchanan-Guinan protocol of February 13, the Hague court is as a preliminary question, to decide whether or not "in view of all the circumstances and under the principles of international law" the decision of the umpire, Dr. Barge, is final, or whether it is properly subject to revision. If the Hague court holds the decision to be final the case is closed. If on the other hand the court sustains the contention of the Department of State that the decision is subject to revision, the court is to proceed to a reconsideration of the entire case upon its merits. It is submitted that far from imperilling the sanctity of international awards or the cause of international arbitration, the Department of State has done a great service to international law and international arbitration in endeavoring to secure a judicial determination by the Hague tribunal, the ultimate authority in international law, of the grounds upon which an international award may be set aside, at least so far as these grounds are alleged in this particular case.

It is a matter of general satisfaction that the relations between the United States and Venezuela, so long disturbed by the claims which have now been either adjusted or put in the way of settlement through arbitration at The Hague, should as the result of the spirit in which the negotiations leading to the settlement have been handled on both sides, be once more reestablished upon a basis of genuine regard and cordiality.